

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JEFFREY MISHKIN, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,  
INC.,

Defendant.

Case No. 4:22-cv-00666

**MOTION FOR EXPEDITED BRIEFING SCHEDULE ON DEFENDANT'S MOTION  
TO POSTPONE JOINT PROPOSED SCHEDULING PLAN AND SCHEDULING  
CONFERENCE PENDING RESOLUTION OF MOTION TO DISMISS**

Defendant Volkswagen Group of America, Inc. (“VWGoA”), by and through its undersigned counsel, and, for its Motion for Expedited Briefing Schedule on Defendant’s Motion to Postpone Joint Proposed Scheduling Plan and Scheduling Conference Pending Resolution of Motion to Dismiss, states as follows:

1. On June 23, 2022, Plaintiff filed his Class Action Complaint (“CAC”) against VWGoA.
2. On September 12, 2022, VWGoA filed its Motion to Dismiss (Doc. 14). Plaintiff filed his opposition on September 26, 2022 (Doc. 18) and VWGoA filed its reply on October 6, 2022 (Doc. 21). The Motion to Dismiss, which has now been fully briefed and submitted to this Court, seeks, *inter alia*, dismissal or transfer of this action pursuant to the first-filed rule because this putative Missouri statewide class action is a “copy-cat” of a putative nationwide class action entitled *Rieger v. Volkswagen Group of America, Inc.*, 21-cv-10546 (D.N.J. 2021), which was commenced more than a year ago, and is currently pending, in the United States District Court for the District of New Jersey. In addition, VWGoA’s Motion also asserts strong grounds for dismissal

of the CAC under Rules 12(b)(6) and 9(b) for failure to state valid claims for relief against VWGoA.

3. On September 29, 2022, the Court entered an Order Setting Rule 16 Conference, scheduled for October 28, 2022. The Court also ordered the Parties to submit a Joint Proposed Scheduling Plan no later than October 18, 2022.

4. Based upon the circumstances presented, contemporaneously with this Motion, VWGoA filed a Motion to Postpone Joint Proposed Scheduling Plan and Scheduling Conference Pending Resolution of Motion to Dismiss and Memorandum in Support (“Motion to Postpone”).

5. In order to have the Court’s ruling on VWGoA’s Motion to Postpone prior to the October 18, 2022 deadline for Parties to submit a Joint Proposed Scheduling Plan, VWGoA requests the Court to enter an expedited briefing schedule as follows:

- a. Plaintiff’s response due October 12, 2022; and
- b. VWGoA’s reply due October 14, 2022, should it choose to file one.

WHEREFORE, VWGoA respectfully requests that the Court enter an Order expediting the briefing schedule for VWGoA’s Motion to Postpone.

Dated: October 6, 2022

Respectfully submitted,

**SHOOK, HARDY & BACON L.L.P.**

By: /s/ Katherine Landfried  
Katherine Landfried, (Mo Bar #70181)  
190 Carondelet Plaza, Suite 1350  
St. Louis, MO 63105  
Telephone: 314.690.0207  
Facsimile: 314.690.0249  
Email: klandfried@shb.com

**HERZFELD & RUBIN, P.C.**

Michael B. Gallub  
(*Pro Hac Vice* Motion to be filed)  
125 Broad Street  
New York, New York 10004  
Ph: (212) 471-8500  
Fax: (212) 344-3333  
Email: mgallub@herzfeld-rubin.com

*Attorneys for Defendant Volkswagen Group of America, Inc*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 6th day of October 2022, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Michael J. Flannery  
CUNEO GILBERT &  
LADUCA, LLP  
500 North Broadway  
Suite 1450  
St. Louis, MO 63102  
P: 314-226-1015  
mflannery@cuneolaw.com

Gary K. Burger  
BURGER LAW, LLC  
500 North Broadway  
Suite 1860  
St. Louis, MO 63102  
P: 314-542-2222  
gary@burgerlaw.com

Charles J. LaDuca  
CUNEO GILBERT &  
LADUCA, LLP  
4725 Wisconsin Avenue, NW  
Suite 200  
Washington, DC 20016  
P: 202-789-3960  
charles@cuneolaw.com

*Counsel for Plaintiff*

*/s/ Katherine Landfried* \_\_\_\_\_  
Attorney for Defendant